

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.:
Date Purchased:

-----X
LUIS FAMILIA and JEFFREY GUTIERREZ,

SUMMONS

Plaintifs,

-against-

Plaintiff designates
BRONX County as the
place of trial

CITY OF NEW YORK, THE NEW YORK CITY POLICE
DEPARTMENT, Det. ODALIS PEREZ and Det. JOSE
A. PEINAN and OFFICER[S] JOHN AND JAMES DOE,
names being fictitious and meant to designate additional
offending officers,

The basis of venue is:
CPLR 504 (3)

Defendants.
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To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and
serve a copy of your answer, or, if the complaint is not served with this summons, to
serve a notice of appearance on the Plaintiff's attorneys within twenty days after the
service of this summons, exclusive of the day of service, where service is made by
delivery upon you personally within the state, or within 30 days after completion of
service where service is made in any other manner. In case of your failure to appear or
answer, judgment will be taken against you by default for the relief demanded in the
complaint to be assessed by the Court.

Dated: Bronx, N.Y.
July 20, 2012


By: JONATHAN L. GLEIT, ESQ.
Attorney for Plaintiffs

888 Grand Concourse
Suite 1-O
Bronx, NY 10451
(718) 742-0200

To:
CITY OF NEW YORK CORPORATION COUNSEL
100 Church Street, 4th Floor, Law Dept.
New York, New York 10007

Det. Odalis Perez, Shield No. 007037, Det. Jose A. Peinan, Shield No. 002276
of the NARCBX, 1 POLICE PLAZA, NY NY 10038

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
LUIS FAMILIA and JEFFREY GUTIERREZ,

Index No.:

Plaintiffs,

VERIFIED COMPLAINT

-against-

CITY OF NEW YORK, THE NEW YORK CITY POLICE
DEPARTMENT, Det. ODALIS PEREZ, Det. JOSE A.
PEINAN, and OFFICER[S] JOHN AND JAMES DOE,
names being fictitious and meant to designate additional
offending officers,

Defendants.
-----X

Plaintiffs, by their attorney, **Jonathan L. Gleit, Esq.**, complaining of the
Defendants, respectfully alleges, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF
THE PLAINTIFFS LUIS FAMILIA AND JEFFREY GUTIERREZ

1 At the time of the commencement of this action, Plaintiffs LUIS FAMILIA and
JEFFREY GUTIERREZ were and still are residents of the County of Bronx, City and
State of New York.

2 That the causes of action alleged herein arose in the County of Bronx, City and
State of New York.

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BRONX COUNTY

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3. That at all times herein mentioned Defendant CITY OF NEW YORK was, and still is, a Municipal Corporation and body politic, duly formed, organized and existing under and by virtue of the laws of the State of New York.

4. That the CITY OF NEW YORK maintains a Police Department.

5. That on and about May 7, 2011, Det. ODALIS PEREZ was employed by the CITY OF NEW YORK and THE NEW YORK POLICE DEPARTMENT.

6. That on and about May 7, 2011, at approximately 2 P.M., Det. ODALIS PEREZ was working and acting within the scope of his employment as a Police Officer, and under the color of law.

7. That on and about May 7, 2011, Det. JOSE A. PEINAN was employed by the CITY OF NEW YORK and THE NEW YORK POLICE DEPARTMENT.

8. That on and about May 7, 2011, at approximately 2 P.M., Det. JOSE A. PEINAN was working and acting within the scope of his employment as a Police Officer, and under the color of law.

9. That on and about May 7, 2011, OFFICER[S] JOHN AND/OR JAMES DOE were employed by the CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT.

10. That on and about May 7, 2011 at approximately 2 P.M., OFFICER[S] JOHN AND/OR JAMES DOE were working and acting within the scope of their employment as a Police Officer[s], and under the color of law.

11. That on or about May 7, 2011 at approximately 2 P.M., in front of 2609 Briggs Avenue, Bronx, New York, the plaintiffs LUIS FAMILIA and JEFFREY GUTIERREZ were improperly arrested, and confined without proper authority, privilege or justification, having no reason in law or in fact to arrest or confine LUIS FAMILIA and JEFFREY GUTIERREZ.

12. That the defendants, their agents, servants and/or employees arrested, intended and did confine the plaintiffs without their consent and without any basis in law or fact and without reasonable, probable or just cause, privilege or justification.

13. That the defendants, their agents, servants and/or employees arrested the plaintiffs without any basis in law or fact, by making false accusations against them, when they knew, or in the exercise of reasonable care, should have known they were false.

14. That the defendants Det. ODALIS PEREZ, Det. JOSE A. PEINAN and/or OFFICER[S] JOHN AND JAMES DOE, did knowingly and maliciously provide false

information to the prosecutor of the criminal action against plaintiffs thereby causing them to suffer an unlawful seizure of person and property.

15. That defendants, their agents, servants and/or employees continued to prosecute plaintiffs without reasonable beliefs that the prosecutions would succeed and deny their freedom after they knew, or should have known, they were innocent of all charges being alleged against them.

16. That all criminal charges brought against plaintiff LUIS FAMILIA, which were brought under docket number 2011BX026067, and all criminal charges brought against plaintiff JEFFREY GUTIERREZ, which were under docket number 2011BX026068 in the Bronx Supreme Court, Criminal Division, regarding the incidents of May 7, 2011, were dismissed by Hon. Ethan Greenberg, an Acting Justice of the Supreme Court, on June 22, 2011.

17. That by reason of the aforementioned, the Defendants actions amounted to malicious prosecution of LUIS FAMILIA and JEFFREY GUTIERREZ.

18. As a result of the malicious prosecutions, plaintiffs were deprived of liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecutions, and were otherwise damaged and injured and forced to defend their liberty for a period of approximately six weeks.

19. That the defendants, their agents, servants and/or employees unlawfully arrested, detained, imprisoned and searched the plaintiffs and took their property without any basis in law or fact, and plaintiffs being aware of their unlawful confinement, thereby causing freight, shock, emotional distress and physical consequences.

20. That during the unlawful arrest of plaintiffs, defendants employed and utilized unreasonable and invasive search methods and procedures upon the plaintiffs such as strip searches, both in public and thereafter at the 52nd Precinct, without without an individualized articulable reasonable suspicion of the secreting of evidence underneath their clothing or within a bodily cavity.

21. That the CITY OF NEW YORK allowed, condoned, permitted and caused a policy and procedure of arresting innocent citizens, almost exclusively citizens of a racial minority, and engaging in a policy and procedure of arresting persons upon pretext and/or the fabrication of evidence, without any probable cause or reasonable basis to do so for nefarious, unlawful reasons such as the fulfillment of arrest quotas and the subjugate minority population without reprimand to the offending officers. That said illegal and unlawful arrests without reasonable or probable cause are a matter of public policy and record and openly acknowledged or known by the defendants, yet

condoned without any reprimand of the offending officers, referral to the District Attorney or Federal Law Enforcement officials for criminal prosecution, or even bone fide internal investigation to deter actions like those complained of herein. Further, officers of the New York City Police Department, and especially and specifically officers of the Narcotics Division and 52nd Precinct routinely engage in the use of practices such as illegal, unlawful and unnecessary strip searches and anal cavity searches without individualized reasonable suspicion of the secreting of evidence inside a bodily cavity in order to degrade, humiliate and subjugate persons, almost exclusively of a racial minority, without any reprimand of the offending officers, referral to the District Attorney or Federal Law Enforcement officials for criminal prosecution, or even bone fide internal investigation to deter actions like those complained of herein even though these occurrences are well known and almost routine, and evidenced by the multitude of actions brought in state and federal courts and complaints made to the Civilian Complaint Review Board and the Bureau of Internal Affairs. Said policy and procedure of having productivity goals which results in the false arrests of innocent persons is exhibited, for instance, in the November 1, 2011 conviction of New York Police Department Det. Jason Arbeeny, whereat Justice Gustin Reichbach commented on the evidence presented by several witnesses that narcotics officers were expected to make

certain arrest goals. Said productivity goals lead to a practice and procedure of, for instance, arresting multiple persons at a specific location when individualized reasonable or probable cause does not exist. Further, officers of the New York City Police Department, and especially and specifically officers of the Narcotics Division and 52nd Precinct routinely engage in the use of practices such as illegal, unlawful and unnecessary strip searches and anal cavity searches in order to degrade, humiliate and subjugate persons, almost exclusively of a racial minority, and testify falsely so often, omitting such acts or fabricating evidence under pretext, that such conduct is considered routine by the offending officers, without any reprimand of the offending officers, referral to the District Attorney or Federal Law Enforcement officials for criminal prosecution, or even bone fide internal investigation to deter actions like those complained of herein even though these occurrences are well known and evidenced by the multitude of actions brought in state and federal courts and complaints made to the Civilian Complaint Review Board and the Bureau of Internal Affairs and by specifically engaging in said conduct specifically with regard to plaintiffs herein. Furthermore patterns of wrongful strip searches conducted without a reasonable articulable suspicion that the searched person was secreting evidence within a bodily cavity has occurred to such individuals such as, for instance, on October 27, 2007 JOSE ALICIA

was improperly strip searched by officers of the 52nd Precinct; on June 30, 2009, MARCO VASQUEZ was improperly strip searched by officers of the 52nd Precinct ;on January 14, 2010 SHAWN ADAMES was improperly strip searched by officers of the 52nd Precinct; on April 2, 2010 LILLIAN BROOKS as improperly strip searched by officers of the 52nd Precinct; on August 30, 2010 TRACY PIQUAN and LUIS POLANCO were improperly strip searched by officers of the 52nd Precinct; and is well evidenced by the May 14, 2004 letter by the Civilian Complaint Review Board with attachments to Police Commissioner Raymond Kelly, detailing the NYPD policy of illegal strip searched by their officers, a copy of which is available to the public at <http://www.nyc.gov/html/ccrb/pdf/stripsearchletter.pdf>, and as evidenced by the above and within individuals and countless others demonstrates that said practices continue unabated.

22. That the CITY OF NEW YORK allowed, condoned, permitted and caused a policy and procedure of arresting innocent citizens, almost exclusively citizens of a racial minority upon the fabrication of evidence or pretext, and utilizing unreasonable invasive search procedures without individualized articulable reasonable suspicion of the secreting of evidence.

23. That no negligence or actions on the part of the plaintiffs contributed to the occurrences alleged herein in any manner whatsoever.

24. The herein above described actions and omissions, engaged in under the color of law by the defendants, including the CITY OF NEW YORK, sued as a person within the meaning of Title 42 U.S.C. 1983, et seq., by policy, procedure and act, deprived the plaintiffs of rights secured by the Constitution and laws of the United States, including, but not limited to their First Amendment right of freedom of expression, their Fourth Amendment right to be free from unlawful seizures of their person, their Fifth Amendment rights of due process of law and to equal protection of the laws, including the right to be free from unjustified confinement utilized by the police, their Eighth Amendment right to be free from cruel and unusual punishment, and under Title 42 U.S.C. 1983, et seq.

25. That this cause of action falls within one or more of the exceptions as set forth in CPLR Section 1602.

26. That as a result of the foregoing, the plaintiffs LUIS FAMILIA and JEFFREY GUTIERREZ were damaged in sums which exceed the jurisdiction of all lower Courts.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF

OF THE PLAINTIFFS LUIS FAMILIA AND JEFFREY GUTIERREZ

27. That plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs enumerated 1 through 26 as though more fully set forth herein.

28. That on or about August 3, 2011, and within 90 days after the claim herein sued upon, plaintiffs caused Notices of Claim, sworn to by or on behalf of the claimant, to be served upon the defendant CITY OF NEW YORK, by delivering a copy thereof, in duplicate, to the offices of the defendant CITY OF NEW YORK, which said Notices of Claim set forth the name and post office address of the claimants and claimants' attorney, the nature of the claims, the time when, the place where, and the manner in which the claims arose and items of damage or injuries claimed to have been sustained, so far as then practicable. At least thirty (30) days have elapsed prior to the commencement of this action since the service of such Notices of Claim as aforesaid and adjustment of payment thereof has been neglected or refused by the defendant, and defendant conducted a General Municipal Law §50h hearing of plaintiff JEFFREY GUTIERREZ on March 12, 2012, and this action was commenced on the claim within one year and ninety days after the happening of the event upon which the claim is based.

29. On February 2, 2012, plaintiff LUIS FAMILIA sent a facsimile correspondence to the CITY OF NEW YORK, annexed hereto as Exhibit "A" with confirmation page,

indicating that the CITY OF NEW YORK had failed to reschedule a General Municipal Law §50h hearing of plaintiff, and that plaintiff intended to commence an action, and that if the CITY OF NEW YORK continued to fail to reschedule said hearing, it would be necessarily be considered waived.

30. That this action is being commenced within one year and ninety days after accrual of this cause of action, or within the time allowed by law.

31. That on or about May 7, 2011 at approximately 2 P.M., in front of 2609 Briggs Avenue, Bronx, New York, the plaintiffs LUIS FAMILIA and JEFFREY GUTIERREZ were improperly arrested, and confined without proper authority or justification, having no reason in law or in fact to arrest or confine LUIS FAMILIA and JEFFREY GUTIERREZ.

32. That at all times herein mentioned, Defendants, their agents, servants and / or employees, deprived the plaintiffs of Due Process under Law.

33. That the defendants, their agents, servants and/or employees arrested and confined the plaintiffs without any basis in law or fact and without reasonable, probable or just cause, justification or privilege.

34. That the defendants, their agents, servants and/or employees arrested the plaintiffs without any basis in law or fact, by making false accusations against them,

when they knew, or in the exercise of reasonable care, should have known they were false.

35. That the defendants, their agents, servants and/or employees unlawfully and without privilege arrested, intended and did detain, imprison and search the plaintiffs and took their property without any basis in law or fact, and plaintiffs being aware of their unlawful confinement without their consent, were thereby caused freight, shock, emotional distress and physical consequences.

36. That no negligence or actions on the part of the plaintiffs contributed to the occurrences alleged herein in any manner whatsoever.

37. That this cause of action falls within one or more of the exceptions as set forth in CPLR Section 1602.

38. That as a result of the foregoing, the plaintiffs LUIS FAMILIA and JEFFREY GUTIERREZ were damaged in sums which exceed the jurisdiction of all lower Courts.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF
OF THE PLAINTIFFS LUIS FAMILIA AND JEFFREY GUTIERREZ

39. That plaintiffs repeats, reiterates and realleges each and every allegation contained in paragraphs enumerated 1 through 38 as though more fully set forth herein.

40. That the defendants, their agents, servants and/or employees prosecuted criminal actions against the plaintiffs without any basis in law or fact.

41. That the defendants, their agents, servants and/or employees continued to prosecute the criminal actions against the plaintiffs due to racism and prejudice and without any basis in law or fact.

42. That the defendants Det. ODALIS PEREZ and Det. JOSE A. PEINAN and/or OFFICER[S] JOHN AND JAMES DOE, did knowingly and maliciously provide false information to the prosecutor of the criminal action against plaintiffs thereby causing them to suffer an unlawful seizure of person and property.

43. That defendants, their agents, servants and/or employees continued to prosecute plaintiffs without reasonable beliefs that the prosecutions would succeed and deny their freedom after they knew, or should have known, they were innocent of all charges being alleged against them.

44. That all criminal charges brought against plaintiff LUIS FAMILIA, which were brought under docket number 2011BX026067, and all criminal charges brought against plaintiff JEFFREY GUTIERREZ, which were under docket number 2011BX026068 in the Bronx Supreme Court, Criminal Division, regarding the incidents of May 7, 2011, were

dismissed by Hon. Ethan Greenberg, an Acting Justice of the Supreme Court, on June 22, 2011.

45. That by reason of the aforementioned, the Defendants actions amounted to malicious prosecutions.

46. As a result of the malicious prosecutions, plaintiffs were deprived of liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution, and were otherwise damaged and injured. The plaintiffs made court appearances to defend their liberty against these unjust charges over a period of approximately six weeks.

47. That this cause of action falls within one or more of the exceptions as set forth in CPLR Section 1602.

48. That as a result of the foregoing, the plaintiffs LUIS FAMILIA and JEFFREY GUTIERREZ were damaged in sums which exceed the jurisdiction of all lower Courts.

AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF

THE PLAINTIFFS LUIS FAMILIA AND JEFFREY GUTIERREZ

49. That Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs enumerated 1 through 48 as though more fully set forth herein.

50. That on or about May 7, 2011 at approximately 2 P.M., in front of 2609 Briggs Avenue, Bronx, New York, the plaintiffs LUIS FAMILIA and JEFFREY GUTIERREZ were subjected to an improper, unnecessary, unjustified and intrusive bodily search and were thereafter subject to an anal cavity strip search.

51. That during the unlawful arrest of plaintiffs, defendants employed and utilized unreasonable and invasive search methods and procedures upon the plaintiffs such as strip searches, both in public and thereafter at the 52nd Precinct, without without an individualized articulable reasonable suspicion of the secreting of evidence underneath their clothing or within a bodily cavity.

52. That no negligence or actions on the part of the plaintiffs contributed to the occurrences alleged herein in any manner whatsoever.

53. That this cause of action falls within one or more of the exceptions as set forth in CPLR Section 1602.

54. That as a result of the foregoing, the plaintiffs LUIS FAMILIA and JEFFREY GUTIERREZ were damaged in sums which exceed the jurisdiction of all lower Courts.

AS AND FOR A FIFTH CAUSE OF ACTION ON BEHALF OF

THE PLAINTIFFS LUIS FAMILIA AND JEFFREY GUTIERREZ

55. That Plaintiffs repeats, reiterates and realleges each and every allegation contained in paragraphs enumerated 1 through 54 as though more fully set forth herein.

56. That the defendants carelessly, recklessly and negligently failed to properly interview, hire, select, train, manage, supervise and control its employees, agents, and / or servants and negligently retained its employees, agents, and / or servants.

57. That the defendants carelessly, recklessly and negligently failed to properly interview, hire, select, train, manage, supervise and control its employees, agents, and / or servants and negligently retained its employees, agents, and / or servants in the proper arrests of individuals, and in the utilization of invasive search procedures utilized without reasonable individualized articulable suspicion of the secreting of evidence inside a bodily cavity.

58. That solely by reason of the aforesaid occurrence, and as a direct and proximate result of the defendant's negligence, plaintiffs LUIS FAMILIA and JEFFREY GUTIERREZ were denied freedom and rights under the federal and state constitutions and received great and severe injuries with accompanying physical and mental pain and suffering; that the plaintiffs were made, still are and will continue to be sick, sore, lame and disabled and sustained other injuries, both internal and external, all of which, upon information and belief, will be permanent; that it was necessary and will be so in


the future, to incur medical expenses for the care, treatment and attention of the plaintiffs and for the purchase of drugs and medicines, and that plaintiffs were and in the future will be prevented from attending to plaintiffs' usual vocation and avocations; all to the plaintiffs' damage in sums which exceed the jurisdiction of all lower Courts.

59. That this cause of action falls within one or more of the exceptions as set forth in CPLR Section 1602.

60. That as a result of the foregoing, the plaintiffs LUIS FAMILIA and JEFFREY GUTIERREZ were damaged in sums which exceed the jurisdiction of all lower Courts.

WHEREFORE, Plaintiffs demands judgment against the Defendants on the First, Second, Third, Fourth and Fifth Causes of Action inclusive of punitive damages, and attorneys fees as permitted by statute, all in sums which exceed the jurisdiction of all lower Courts, together with the costs and disbursements of this action.

Dated: Bronx, N.Y.
July 20, 2012


By: **JONATHAN L. GLEIT, ESQ.**
Attorney for Plaintiffs
**LUIS FAMILIA AND JEFFREY
GUTIERREZ**

888 Grand Concourse
Suite 1-O
Bronx, NY 10451
(718) 742-020

To:

CITY OF NEW YORK

CORPORATION COUNSEL

100 Church Street

4th Floor, Law Dept. , New York, New York 10007

Det. Odalis Perez, Shield No. 007037, Det. Jose A. Peinan, Shield No. 002276
of the NARCBX, 1 POLICE PLAZA, NY NY 10038

PLAINTIFF'S VERIFICATION

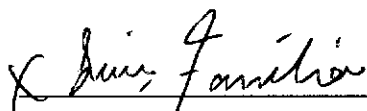
LUIS FAMILIA affirms the following to be true under the penalties of perjury:

I am Plaintiff in the within action and have read the annexed

Complaint

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon personal knowledge, facts, records, and other pertinent information contained in my files.

DATED: BRONX, N.Y.



LUIS FAMILIA

PLAINTIFF'S VERIFICATION

JEFFREY GUTIERREZ affirms the following to be true under the penalties of perjury:

I am Plaintiff in the within action and have read the annexed

Complaint

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon personal knowledge, facts, records, and other pertinent information contained in my files.

DATED: BRONX, N.Y.

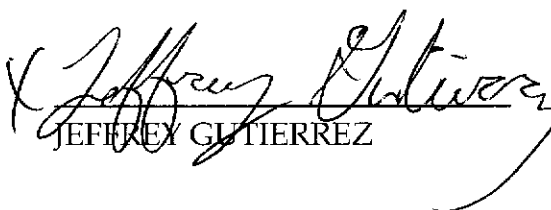

JEFFREY GUTIERREZ

Exhibit “A”